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In re Application of
Wu et al.
Application No. 10/656,453
Filed: September 5, 2003
Attorney Docket No. 03-SIN-092

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: DECISION ON PETITION
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This is a decision on the petition, filed April 15, 2008, which is being treated as a petition under 37 CFR 1.8(b), requesting withdrawal of the holding of abandonment in the above-identified application.

The petition is **GRANTED**.

This application was held abandoned for failure to timely respond to the Office action of August 10, 2007, which set a three (3) month shortened statutory period for reply. Accordingly, a reply was due on or before November 10, 2007.

Petitioner states that a timely reply was mailed via certificate of mailing on November 13, 2007, which included the following papers: Amendment transmittal and a check in the amount of \$1,050.00 for five additional independent claims. Petitioner has submitted a copy of the previously mailed correspondence, which bears a certificate of mailing dated November 13, 2007, which would have rendered the reply timely if received.¹ The postcard will not serve as prima facie evidence of receipt of a reply, because the postcard does not contain the Office stamp.

The file record does not include the originally submitted papers. Failure to receive correspondence which includes a certificate of mailing or certificate of facsimile transmission is addressed in 37 CFR 1.8(b), reproduced below:

In the event that correspondence is considered timely filed by being mailed or transmitted in accordance with paragraph (a) of this section, but not received in the U.S. Patent and Trademark Office after a reasonable amount of time has elapsed from the time of mailing or transmitting of the correspondence, or after the application is held to be abandoned, or after the proceeding is

¹ It is noted that November 10, 2007 was a Saturday and November 12, 2007 was a Federal Holiday, hence a reply submitted on November 13, 2007 would have been timely.

dismissed, terminated, or decided with prejudice, the correspondence will be considered timely if the party who forwarded such correspondence:

- (1) Informs the Office of the previous mailing or transmission of the correspondence promptly after becoming aware that the Office has no evidence of receipt of the correspondence;
- (2) Supplies an additional copy of the previously mailed or transmitted correspondence and certificate; and
- (3) Includes a statement which attests on a personal knowledge basis or to the satisfaction of the Director to the previous timely mailing or transmission. If the correspondence was sent by facsimile transmission, a copy of the sending unit's report confirming transmission may be used to support this statement.

The petition satisfies the above requirements of 37 CFR 1.8(b). Accordingly, the holding of abandonment for failure to timely file a reply to the Office action of August 10, 2007 is hereby withdrawn and the application restored to pending status.

It is noted the Office is still not in receipt of the check of \$1,050.00. Pursuant to petitioner's request, deposit account no. 50-0208 will be charged the \$1050.00.

The correspondence address on the petition differs from the correspondence address of record. A courtesy copy of this decision will be mailed to Petitioner. However, all future correspondence will be directed to the address of record until such time as appropriate instructions are received to the contrary.

The copy of the reply received with the petition will be accepted in place of the reply shown to have been mailed (or transmitted by facsimile) on November 13, 2007.

This application is being referred to Technology Center AU 2615 for appropriate action in the normal course of business on the reply received with petition.



Charlema Grant
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Office of Petitions

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